IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 724

BERNARD SOUTH AND HAROLD C. FLEMING
Plaintiffs-Appellants

vs.

JAMES PETERS as Chairman of the GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE; MRS. IRIS BLITCH, as Acting Secretary of the GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE; THE GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE; THE GEORGIA STATE DEMOCRATIC PARTY; and BEN W. FORTSON, JR., Secretary of State of Georgia.
Defendants-Appellees

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

PETITION FOR REHEARING

HAMILTON DOUGLAS, JR.
MORRIS B. ABRAM,
Counsel for Appellants.

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JAMES PETERS as Chairman of the GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE: MRS. IRIS BLITCH, as Acting Secretary of the GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE: THE GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE: THE GEORGIA STATE DEMOCRATIC PARTY: and BEN W. FORTSON, JR., Secretary of State of Georgia.

Defendants-Appellees

PETITION FOR REHEARING

The appellants in the above styled case now come and petition the Court for a rehearing in the cause in which, on April 17th the Court entered an order affirming the decision and judgment below.

Grounds of the Petition

While technically this paper is designated as a petition for rehearing, it is in fact a petition for a hearing.

Appellants presented to the Court an appeal founded on the provisions of a statute. (See 28 U. S. C. Section 1253.) Up to this time, the appellants have not had the opportunity to present the merits of their case to the Court.

It is our understanding that the Court took jurisdiction of the case on appeal and decided the case on the merits.

The Court's affirmance of the decision below is based on authorities which do not support its decision. These authorities are nothing more than instances in which the Federal Courts have refused equitable relief. The grounds of refusal in none of these instances apply in the case at bar. This could have been easily established on an argument of the case. But appellants have not been heard.

The Court having jurisdiction of the cause, it was appellants' understanding that they had the right fully to present their case. This right is derived from Congress. The right is subject only to the provisions of the Rules of the Supreme Court.

Appellants have thus understood that their right to present this case and to be heard could be foreclosed only if:

(a). The appeal was "taken for delay only"; or

(b). The appeal presented questions "so unsubstantial as not to need further argument".

Appellants knew that with a motion to advance pressingly urged none could find a purpose of delay in their appeal. Further, with a strong dissent from a Judge below; with entirely new questions being presented to the Court, appellants did not think it wise or proper extensively to set forth the full merits of their case in their "Brief in Opposition to Appellees Motion to Dismiss or Affirm". Instead, they employed only a fragmentary summation to show the outline of their case.

The fact that two Justices of this Court believed that issues presented in the appeal were not only debatable but

should have been decided otherwise than in the per curiam opinion further indicates the substantial nature of the appeal.

A Case of First Impression

Appellants had prepared for submission to the Court when the case was argued on the merits, a brief outlining the nature of the complaint, the distinctions in all closely relevant authorities, the historical background of the constitutional requirement for political equality, and many of the matters which, we respectfully submit show that the case has been incorrectly decided. We now submit that brief in support of this petition.

We further would pray that the Court give the closest attention to the seriousness of the precedent which the decision now standing would establish. No decision of this Court, we very respectfully but confidently assert, required the action taken on April 17th. But if this decision stands then the Court will, without argument and without a full presentation of the question, have forged a new precedent which will bind this Court and future Courts.

The Court's decision in this case is contained in one sentence: "Federal courts consistently refuse to exercise their equity powers in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions."

In each of the cases cited in support of this decision the Court stated the relief was denied because the granting of it would have conflicted with some well established legal or equitable principle. In each case the court announced why relief was denied. None of the "whys" announced in

these cases apply here. Therefore, this one sentence decision is a sweeping pronouncement of an entirely new principle of constitutional law. The ruling stands alone without any assistance from *Wood v. Broom, Colegrove v. Green* and *MacDougall v. Green*. Our brief which is filed in support of this petition makes this clear.

The ruling of the Court, we respectfully assert, is a mere statement of a circumstance. The statement that X state had never electrocuted a woman is also a statement of circumstance. But, that fact, however true, is no binding authority precluding the infliction of that punishment in the *appropriate* case.

It would be, in our view, regrettable for a statement of circumstance to become a great principle of constitutional law and that without argument.

Appellants are not asking that the Court reverse any precedents on this petition. Appellants are merely praying that the order entered without a full hearing be vacated and that a hearing be given before this grave issue is closed forever.

WHEREFORE appellants pray that the decision and order of this Court entered on 17 April 1950 be vacated and that the mandate be stayed and that the case be set and argued on its merits before the adjournment for the Term.

Dated this day of April, 1950.

Respectfully submitted,

HAMILTON DOUGLAS, JR.
MORRIS B. ABRAM,
Counsel for Appellants.

CERTIFICATE OF COUNSEL

We, the undersigned, counsel of record for the appellants in the above styled case do hereby certify that:

This Petition for Rehearing is presented in good faith and not for delay and that counsel believe that the grounds of the Petition are meritorious.

This April, 1950.

HAMILTON DOUGLAS, JR.
MORRIS B. ABRAM,
Counsel for Appellants.

AFFIDAVIT OF SERVICE

Hamilton Douglas, Jr., being duly sworn, deposes and says that he is one of the Attorneys for Appellants in the above entitled cause, that he gave notice of Appellants' Petition for Rehearing by depositing on April 26, 1950, in a United States Mail Box in the City of Atlanta a copy of said Brief addressed to each of the attorneys of record for Appellees.

Subscribed and sworn to before me by Hamilton Douglas, Jr., who is to me personally known, this 26th day of April, 1950.

Notary Public